

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

ALDERWOOD SURGICAL CENTER, LLC, a  
Washington limited liability company;  
NORTHWEST NASAL SINUS CENTER P.S.,  
a Washington professional service corporation;  
AND JAVAD A. SAJAN, M.D.,

Defendants.

NO. 2:22-CV-01835-RSM

ORDER GRANTING IN PART  
PLAINTIFF'S MOTION FOR  
PROTECTIVE ORDER

This matter comes before the Court on Plaintiff State of Washington's "Motion for Protective Order regarding Defendants' Notice of FRCP 30(b)(6) Deposition," Dkt. #94. Defendants Alderwood Surgical Center, LLC, Northwest Nasal Sinus Center P.S., and Javad A. Sajjan, M.D. (collectively "Allure") have filed an opposition. Dkt. #106.<sup>1</sup> Neither party has requested oral argument.

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<sup>1</sup> Allure's counsel notes at the top of its Response that it has tried to withdraw in this matter and "requests that any substitute counsel engaged by Defendants be permitted to supplement or replace this Opposition and the Court hold any ruling on the States' motion (Dkt. 94) in abeyance until such opportunity has been afforded to substitute counsel." Dkt. #106 at 1. The Court has since granted counsel's request to withdraw but did not permit such to occur until new counsel has been obtained. *See* Dkt. #117. No counsel has appeared. Allure presents no legal basis to permit a second Response brief to be filed at some indeterminate future time, nor any basis to delay ruling on this important Motion. The Court denies those requests.

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). If requested discovery is not answered, the requesting party may move for an order compelling such discovery. Fed. R. Civ. P. 37(a)(1). The party that resists discovery has the burden to show why the discovery request should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

“A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending – or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken.” Fed. R. Civ. P. 26(c)(1). “The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...” *Id.* “The decision to issue a protective order rests within the sound discretion of the trial court.” *Seiter v. Yokohama Tire Corp.*, 2009 WL 2461000, \*1 (W.D. Wash. 2009).

Under Rule 30(b)(6), a party naming as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity must describe “with reasonable particularity” the matters for examination.

At issue in this Motion are topics 1-5, 7, 9-14, and 16-18 listed by Allure for an upcoming deposition of Plaintiff’s 30(b)(6) designee:

1. All evidence obtained by the WAG during its investigation of Defendants that supports the allegations in the Complaint, the method by and source from which the evidence was obtained, and when the WAG discovered or obtained the evidence.

1 2. The WAG's Investigation of Defendants, including but not  
 2 limited to: (a) The specific conduct of Defendants which the WAG  
 3 takes the position violates or violated the Washington Consumer  
 4 Protection Act, RCW 19.86, the Consumer Fairness Review Act,  
 5 HIPAA, or any other law or regulation that the Consumer Protection  
 6 Division has authority to enforce; (b) The WAG's calculation of the  
 7 total number of violations of the CPA for specific conduct the WAG  
 8 alleges violates the CPA, and the specific remediation, injunctive  
 9 relief, disgorgement, restitution, or penalties that the WAG deems  
 10 appropriate for the [sic] each of the alleged violations; (c) The  
 "consumers" the WAG is alleging are harmed under the Washington  
 Consumer Protection Act, RCW 19.86, by Defendants' conduct; (d)  
 Whether and which witness statements were taken under oath during  
 the Investigation; and (e) The WAG's referrals of any subject matter  
 area of the investigation of Defendants to any other local, state, or  
 federal government office or agency.

11 3. The Consumer Protection Division's general investigative  
 12 process, including: (a) The current and historical process and criteria  
 13 for intaking and analyzing consumer and constituent complaints; (b)  
 14 The general process and criteria for determining whether to file a  
 15 lawsuit against a specific target; (c) The factual basis of the WAG's  
 16 claim of work product protections on investigative memoranda of  
 17 interviews created by WAG investigators; (d) Practices and  
 18 procedures relating to the decisions of whether to interview or  
 19 depose targets of an investigation; and (e) The current and historical  
 20 process for ensuring that the attorneys or staff assigned to particular  
 21 investigations or litigations do not have any actual or potential  
 22 conflicts-of-interest or other biases that would undermine the ability  
 23 of the WAG to fulfill its mission of providing "independent, and  
 24 ethical legal services to the State of Washington and protect the  
 25 rights of its people."

26 4. [Revised Topic] The WAG's ethics and training education  
 27 regarding conflicts of interest.

28 5. Dr. William Portuese's communications with the WAG or any of  
 29 its representatives or staff, including Attorney General Bob  
 30 Fergusson.

31 7. [Revised Topic] Identify the individual(s) who made the decision  
 32 to open an investigation into Defendants, issue a CID to Defendants,  
 33 reject the pre-litigation settlement offer from Defendants, and  
 34 initiate litigation against Defendants.

1 9. The WAG's process for ensuring that information that it conveys  
 2 to the public via the press is accurate and non-misleading, including:  
 3 (a) The WAG's Public Affairs Unit's ("PAUs") responsibilities,  
 4 including the PAU's processes in ensuring its press releases, press  
 5 conferences, and other information conveyed to the public is  
 6 truthful, accurate, and non-misleading; (b) The process that the  
 7 WAG undertook to ensure that public statements regarding the  
 8 investigation and conduct of Defendants were true and accurate; (c)  
 9 The Attorney General's decision to omit the key fact that the  
 10 Consumer Protection Division launched its investigation into  
 Defendants after receiving a complaint from Defendants'  
 competitor, Dr. William Portuese; (d) Any efforts prior to the  
 December 29, 2022 press conference to substantiate the truthfulness  
 of the allegations and statements made by Cynthia Tamlyn and  
 Victoria Hester at the press conference; (e) The specific steps that  
 PAU took to prepare the Attorney General for the Press Conference;  
 and (f) The WAG's media outreach regarding Defendants.

11 10. The Office of the Attorney General's regulation of healthcare  
 12 providers, including: (a) The Consumer Protection Division's  
 13 expertise, experience, and authority in regulating and investigating  
 14 issues related to the practice of medicine. (b) The WAG's historical  
 15 and current positions as to primary jurisdiction over health care  
 16 practitioners with regards to the practice of medicine, the  
 17 entrepreneurial aspects of medicine, and regulation of healthcare  
 18 generally; (c) The authority upon which the Consumer Protection  
 19 Division has authority to investigate and regulate the practice of  
 20 medicine under the Consumer Protection Act, RCW 19.86; and (d)  
 21 The WAG's positions on the scope of its consumer protection  
 22 authority vis-à-vis other primary regulators, such as the Washington  
 23 Medical Commission or the U.S. Department of Health and Human  
 24 Services, Office of Civil Rights.

25 11. Any historical or current use of settlement agreements that  
 26 include confidentiality or non-disparagement clauses by the State of  
 27 Washington, including but not limited to the use of settlement  
 agreements by the Torts Division or University of Washington  
 School of Medicine.

12. [Revised Topic] The outcomes of closed CPA investigations by  
 the WAG into other health care practices.

13. [Revised Topic] The outcomes of closed CPA investigations by  
 the WAG into other cosmetic or plastic surgery practices, and  
 without invading any privilege or statutory confidentiality

1 protection, the existence of any ongoing investigations into other  
2 cosmetic or plastic surgery practices.

3 14. [Revised Topic] The aggregate number of CPA investigations  
4 opened by the WAG in each of calendar years 2016-2023.

5 16. Source of funding for any services received by the WAG from  
6 News Exposure.

7 17. Meetings with complainants that were initiated through direct  
8 contact with Attorney General Ferguson between 2017-present.

9 18. The extent to which Attorney General Ferguson's political  
10 career and aspirations influence investigation and litigation  
11 decisions within the WAG.

12 Dkt. #95-11 ("Amended Notice of Rule 30(b)(6) Deposition"); Dkt. #94 at 4 (briefing  
13 listing topics at issue).

14 For Topics 1 and 2, Plaintiff argues that the investigation at issue was conducted entirely  
15 in anticipation of litigation, that its 30(b)(6) witness has no independent knowledge, and that  
16 therefore "the only information a witness could provide are facts and opinions held by the trial  
17 team." Dkt. #94 at 6 (citing, *inter alia*, *SEC v. Buntrock*, 217 F.R.D. 441, 444 (N.D. Ill. 2003)  
18 ("The investigation in this matter was conducted by SEC attorneys and by SEC employees  
19 working under the direction of attorneys. Thus, the 30(b)(6) notice would necessarily involve the  
20 testimony of attorneys assigned to this case, or require those attorneys to prepare other witnesses  
21 to testify.")). Plaintiff argues the topics are too likely to scoop up privileged work product. *Id.*  
22 at 6 – 7 (citing, *inter alia*, *SEC v. Nacchio*, 614 F. Supp. 2d 1164, 1177 (D. Colo. 2009)). Plaintiff  
23 asserts these topics are overbroad, vague, and unduly burdensome. *Id.* at 7. Finally, Plaintiff  
24 maintains that Topic 2(c)'s request for identification of harmed consumers is irrelevant because  
25 consumer harm is not an element of its CPA case. *Id.* (citing *State v. Mandatory Poster Agency,*  
26 *Inc.*, 199 Wn. App. 506, 518, 398 P.3d 1271, 1276 (2017)).

1 The Court finds that Topics 1 and 2 generally seek factual information, not attorney  
2 mental impressions, and Plaintiff is free to object during the 30(b)(6) deposition as to any  
3 question that elicits material protected by the work product privilege. The Court finds that these  
4 topics are not overbroad, vague, or unduly burdensome. Plaintiff has failed to convince the Court  
5 that topic 2(c) is irrelevant considering Allure's point that Plaintiff is seeking restitution for  
6 consumers. *See* Dkt. #106 at 10–11 (citing Dkt. #1 at ¶ 9). The Court denies Plaintiff's Motion  
7 as to these Topics.  
8

9 Turning to Topics 3-5, 7, 9-14, and 16-18, Plaintiff states:

10 Allure claims these topics are relevant to its affirmative defenses.  
11 *See* Brysacz Decl. ¶ 13, Ex. J. Those defenses, however, were absurd  
12 from the outset. This Court struck them, and in doing so noted the  
13 high bar for asserting them against a “governmental entity in a civil  
14 action brought to enforce a public right or protect a public interest.”  
15 May 26, 2023 Order, Dkt. #24 at 6. It has now been nine months  
16 since Allure re-pled those defenses. After countless written  
17 responses to RFAs and Interrogatories, Public Records Act requests,  
18 and the deposition of Dr. Portuese—Dr. Sajan's purported rival—  
19 Allure can identify no evidence supporting these affirmative  
20 defenses.

21 CPD has asked at least four times over the past months for Allure to  
22 identify any evidence supporting these affirmative defenses and  
23 indicating that without such a proffer, further discovery into these  
24 topics is not well-founded. Allure has declined every opportunity  
25 support its defenses, until the eve of this motion, when it reiterated  
26 the same theories this Court dismissed last year along with baseless  
27 speculation that has been affirmatively disproven by documents and  
deposition testimony. That failure illustrates the truth—these  
deposition topics are not designed to obtain relevant information,  
are not proportional to the needs of the case, are not important to  
resolving the issues presented, and seek to impose undue burden and  
expense on CPD as this case proceeds to trial. *See* FRCP 26(b)(1).  
They are a sideshow...

28 Dkt. #94 at 8.

1 The Court agrees with Plaintiff that Topics 3 and 4 “presuppose some investigative  
2 misconduct by CPD, an allegation for which there is no evidence.” *Id.* at 9. These topics do not  
3 refer to some specific incident or event but seek to scoop up all possible information to look for  
4 misconduct. These topics are fishing expeditions that seek information not particularly relevant  
5 to claims or defenses and are overbroad and not proportional to the needs of the case. For Topic  
6 5, Plaintiff states that it has already produced its communications with Dr. William Portuese;  
7 Allure is nevertheless free to ask questions about this topic. Topic 7 clearly seeks attorney work  
8 product or privileged information and will not be permitted. Topic 9 also presupposes some  
9 investigative misconduct by Plaintiff and will not be permitted for the same reasons as Topics 3  
10 and 4; it also appears to stray far from the claims and defenses in this case. The Court agrees  
11 with Plaintiff that Topic 10 is vague, ambiguous, overbroad, unduly burdensome, duplicative of  
12 information obtained in writing, and not minimally relevant to the issues in this case. Topic 11  
13 is irrelevant and unduly burdensome; the State’s practice of confidentiality in settlement  
14 agreements has no bearing on the issues in this case. Topics 12 through 14 seek information  
15 about Plaintiff’s investigations into other health care practices. This information is not  
16 particularly relevant and not proportional to the needs of the case; again it appears to be a classic  
17 fishing expedition based on nothing. Topic 17 appears to seek information that is directly  
18 relevant to this case, although it is vague. Plaintiff has failed to demonstrate that Topic 17 should  
19 be subject to a protective order. Topic 18 presupposes misconduct, is vague, ambiguous, overly  
20 broad, and unduly burdensome and will not be permitted.

21 The Court also agrees with Plaintiff that this witness can only speak on behalf of the  
22 Consumer Protection Division. *See* Dkt. #94 at 13.

1 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
2 finds and ORDERS that Plaintiff State of Washington's "Motion for Protective Order regarding  
3 Defendants' Notice of FRCP 30(b)(6) Deposition," Dkt. #94, is GRANTED IN PART as stated  
4 above.

5 DATED this 30<sup>th</sup> day of April, 2024.

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8 RICARDO S. MARTINEZ  
9 UNITED STATES DISTRICT JUDGE  
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